

Parental Leave for Same Sex Domestic Partners

My company has about 30 employees in Oregon and is required to follow the Oregon Family Leave Act (OFLA). Rachel, the communications director, who is openly gay, recently announced that her domestic partner, Susan, is pregnant. Rachel came to my office informing me that she would like to take some time off to care for their newborn after Susan gives birth. Rachel has mentioned that she and Susan recently traveled to San Francisco to obtain a marriage license.

Is it legal for an Oregon employer to ask an employee who is eligible to take OFLA leave, to present a copy of her marriage license before granting OFLA leave?

Answer: If an Oregon employer does not ask its married heterosexual employees for copies of their marriage licenses before granting OFLA leaves, it should not ask the employees with same sex spouses to present marriage licenses because the requirement will be seen as a discriminatory employment practice based on sexual orientation. If an Oregon employer chooses to ask employees with same sex spouses for a copy of the employee's marriage license before granting OFLA leave, it must require the same of married heterosexual employees.

My understanding is that in the State of Oregon the same-sex marriage license issued by the State of California is not valid. If my company chooses to ask all employees for copies of documents confirming family relationships, e.g., marriage licenses of married employees, before granting OFLA leaves, what documentation can an Oregon employer ask Rachel to submit?

Answer: Your understanding is correct. According to Section 5a of Article XV of the Constitution of Oregon, it is the law of Oregon that only a marriage between one man and one woman shall be valid or legally recognized as a marriage. In the State of Oregon, an employee with a same sex domestic partner may obtain a Certificate of Domestic Partnership which may be presented to satisfy your company's request for documents confirming a family relationship. However, again, an employer that asks employees to present Certificates of Domestic Partnership before granting OFLA leave, should apply the same policy to married heterosexual employees requesting family leave to care for their family members..

In my company married heterosexual employees are not required to present copies of their marriage licenses before being granted OFLA leaves. Rachel will not be required to present her Certificate of Domestic Partnership. Susan is the biological mother of the newborn. Rachel has not legally adopted the child yet. Is my company required to provide Rachel parental leave after Susan gives birth?

Answer: Yes, under OFLA, parental leave is taken to care for the employee's newborn, and a child, for the purposes of parental leave, includes the child of an employee's same-sex domestic partner. Therefore, your company is required to allow Rachel take parental leave.

For your information, if Rachel takes the entire 12 weeks of OFLA leave for parental leave she may take an additional 12 weeks of sick child leave within the same leave year. If Rachel uses less than 12 weeks of parental leave she may use the balance for any other OFLA leave purpose but she does not get an additional 12 weeks of sick child leave.

If you would like to learn more about the Oregon Family Leave Act (OFLA) and the amended Family Medical Leave Act (FMLA), Technical Assistance for Employers will be conducting seminars on Leave Laws in various cities: August 11, Coos Bay; August 13, Tillamook; August 19, Eugene; and August 27, The Dalles. Please visit www.oregon.gov/BOLI for registration information.